



REGULAR MEETING OF THE MILPITAS CITY COUNCIL

AGENDA

TUESDAY, SEPTEMBER 5, 2017

455 EAST CALAVERAS BOULEVARD, MILPITAS, CA

5:00 P.M. (CLOSED SESSION)

7:00 P.M. (PUBLIC BUSINESS)

SUMMARY OF CONTENTS

I. CALL TO ORDER by Mayor and ROLL CALL by City Clerk

(a) CONFERENCE WITH LABOR NEGOTIATORS - COLLECTIVE BARGAINING

Pursuant to California Government Code Section 54957.6

City Negotiator: Tina Murphy

Employee Group: Milpitas Employees Association

Under Negotiation: Wages, Hours, Benefits, and Working Conditions

(b) CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION

Pursuant to California Government Code Section 54956.9(d)(2) - City as Defendant

(c) CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION

Pursuant to California Government Code Section 54956.9(d)(1)

Tom Williams v. City of Milpitas, et al. - Santa Clara County Superior Court Case No. 17CV309235

(d) CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION

Pursuant to California Government Code Section 54956.9(d)(1)

First Amendment Coalition v. City of Milpitas – Santa Clara County Superior Court Case No. 17CV310994

(e) CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION

Pursuant to California Government Code Section 54956.9(d)(1)

Tom Williams v. City of Milpitas, et al. - American Arbitration Case No. 01-17-0003-5823

(f) PUBLIC EMPLOYEE PERFORMANCE EVALUATION Pursuant to

California Government Code Section 54957. Position: City Manager

(g) PUBLIC EMPLOYEE DISCIPLINE/DISMISSAL/RELEASE

Pursuant to California Government Code Section 54957

Number of employee(s) affected: 1

II. CLOSED SESSION ANNOUNCEMENT: Report on action taken in Closed Session, if required pursuant to Government Code Section 54957.1, including the vote or abstention of each member present

III. PLEDGE OF ALLEGIANCE (7:00 p.m.)

IV. INVOCATION (Councilmember Barbadillo)

V. PRESENTATIONS

- Commend FlexFactor
- Proclaim September as Pain Awareness Month
- Proclaim September as National Preparedness Month
- Recognize Recreation Services Lifeguard Staff
- Recognize Leaders of Swades Festival (Association of Indo-Americans)

VI. PUBLIC FORUM

Members of the audience are invited to address the Council on any subject not on tonight's agenda. Speakers must come to the podium, state their name and city of residence for the Clerk's record, and limit their remarks to three minutes. As an item not listed on the agenda, no response is required from City staff or the Council and no action can be taken. However, the Council may instruct the City Manager to place the item on a future meeting agenda.

VII. ANNOUNCEMENTS

VIII. ANNOUNCEMENT OF CONFLICT OF INTEREST AND CAMPAIGN CONTRIBUTIONS

IX. APPROVAL OF AGENDA

X. CONSENT CALENDAR (Items with asterisks*)

Consent calendar items are considered to be routine and will be considered for adoption by one motion. There will be no separate discussion of these items unless a member of the City Council, member of the audience, or staff requests the Council to remove an item from or be added to the consent calendar. Any person desiring to speak on any item on the consent calendar should ask to have that item removed from the consent calendar. If removed, this item will be discussed in the order in which it appears on the agenda.

- *1. Accept [City Council Calendar](#) for September 2017
- *2. Approve [City Council Meeting Minutes of August 15, 2017](#)
- *3. Receive the Monthly Update of the Odor Control Report (Staff Contact: Greg Chung, 408-586-3355)
- *4. Approve Request to Waive Park Rental Fee for the Association of Indo-Americans Swades Festival Held at Murphy Park on August 6, 2017 (Staff Contact: Mary Lavelle, 408-586-3001)
- *5. Adopt a Resolution to Authorize Filing an Application for Funding Assigned to Metropolitan Transportation Commission and Committing Any Necessary Matching Funds and Stating the Assurance to Complete the Project – the 2019 Street Resurfacing Project (Staff Contact: Steve Chan, 408-586-3324)
- *6. Per Request of Councilmember Phan, Consider Adoption of a Resolution Opposing the Display of the Flag of the Socialist Republic of Vietnam on City-owned Flag Poles (Contact: Councilmember Phan, 408-586-3032)
- *7. Approve Membership in the Houston-Galveston Area Council (HGAC) and Authorize the City Manager to Sign the Interlocal Contract for Cooperative Purchasing to Maximize Discount on Purchase of Two 2017 Pierce Velocity All-Wheel-Steer Fire Pumpers (Staff Contact: Chris Schroeder, 408-586-3161)
- *8. Approve and Authorize the City Manager to Execute the Subdivision Improvement Agreement for Mixed-Use Development Project Located at 1646 Centre Pointe by SHAC Centre Pointe Apartments LLC (Staff Contact: Judy Chu, 408-586-3325)

- *9. Approve Amendment No. 1 to the Agreement with RMC Water and Environment for the Marylinn Drive Sanitary Sewer Replacement, Projects No. 6115 and No. 6116 (Staff Contact: Steve Erickson, 408-586-3301)**
- *10. Approve Second Amendment to the Franchise Agreement for Disposal of Solid Waste with USA Waste doing business as Waste Management of South Bay to Extend the Commencement Date (Staff Contact: Christopher Diaz, 408-586-3040)**
- *11. Receive a Report on Emergency Repair of Fire Engine E-86 and Authorize Payment of Invoice in the Amount of \$23,227.85 to Burton's Fire, Inc. (Staff Contact: Nina Hawk, 408-586-2603)**

XI. UNFINISHED BUSINESS

- 12. Receive Additional Information Requested by Council and Approve the Agreement Between the City of Milpitas and Mobilitie to Install Small Cell Antennas on Municipal Facilities (Staff Contact: Mike Luu, 408-586-2706)**

XII. REPORT

- 13. Discuss City of Milpitas Advisory Commissions and Process for Commission Appointments (Staff Contact: Steve Pangelinan, 408-586-3051)**

XIII. NEW BUSINESS

- 14. Approve Fiscal Year 2016-17 Year End Budget Adjustments (Staff Contact: Will Fuentes, 408-586-3111)**
- 15. Receive Presentation on the "silicon valley IDEA" Program from Representatives of the Silicon Valley Organization (SVO) and Consider a Partnership with the SVO (Contact: Councilmember Phan, 408-586-3032)**
- 16. Receive Report on City Credit Card Policy (Staff Contact: Will Fuentes, 408-586-3111)**

XIV. RESOLUTIONS

- 17. Receive Updated Information Responding to Council Input and Consider Adopting a Resolution to Amend the By-Laws of the Milpitas Planning Commission (Staff Contact: Bradley Misner, 408-586-3273)**
- 18. Consider Adopting a Resolution Approving a Censure Policy for the City Council (Staff Contact: Christopher Diaz, 408-586-3040)**
- 19. Consider Adopting a Resolution and Authorizing a Letter Opposing Senate Bill 649 and Receive a Report on the Bill's Status (Staff Contacts: Christopher Diaz, 408-586-3040 and Mike Luu, 408-586-2706)**

XV. REPORTS OF MAYOR & COUNCILMEMBERS – from the assigned Commissions, Committees and Agencies

XVI. ADJOURNMENT

NEXT REGULAR CITY COUNCIL MEETING
TUESDAY, SEPTEMBER 19, 2017

KNOW YOUR RIGHTS UNDER THE OPEN GOVERNMENT ORDINANCE

Government's duty is to serve the public, reaching its decisions in full view of the public.

Commissions and other agencies of the City exist to conduct the people's business. This ordinance assures that deliberations are conducted before the people and the City operations are open to the people's review.

For more information on your rights under the Open Government Ordinance or to report a violation, contact the City Attorney's office at Milpitas City Hall, 455 E. Calaveras Blvd., Milpitas, CA 95035

[e-mail: cdiaz@ci.milpitas.ca.gov](mailto:cdiaz@ci.milpitas.ca.gov) / Phone: 408-586-3040

The Open Government Ordinance is codified in the Milpitas Municipal Code as Title I Chapter 310 and is available online at the City's website www.ci.milpitas.ca.gov by selecting the Milpitas Municipal Code link.

Materials related to an item on this agenda submitted to the City Council after initial distribution of the agenda packet are available for public inspection at the City Clerk's office at Milpitas City Hall, 3rd floor 455 E. Calaveras Blvd., Milpitas and on the City website.

All City Council agendas and related materials can be viewed online here:

www.ci.milpitas.ca.gov/government/council/agenda_minutes.asp (select meeting date)

APPLY TO SERVE ON A CITY COMMISSION

Current vacancies on: Arts Commission
Bicycle Pedestrian Advisory Commission
Community Advisory Commission
Economic Development Commission
Emergency Preparedness Commission
Library Commission
Parks, Recreation & Cultural Resources Commission
Recycling & Source Reduction Advisory Commission
Sister Cities Commission
Telecommunications Commission
Youth Advisory Commission

Commission application forms are available online at www.ci.milpitas.ca.gov or at Milpitas City Hall. Contact the City Clerk's office at 408-586-3003 for more information.

For assistance in the following languages, you may call:

Đối với Việt Nam, gọi 408-586-3122

对中国人来说,请用 408-586-3263

Para sa mga Tagalog, tawagan 408-586-3051

Para español, llame 408-586-3232

If you need assistance, per the Americans with Disabilities Act, for any City of Milpitas public meeting, call the City Clerk at 408-586-3001 or send an e-mail to mlavelle@ci.milpitas.ca.gov prior to the meeting. You may request a larger font agenda or arrange for mobility assistance. For hearing assistance, headsets are available in the City Council Chambers for all meetings.

AGENDA REPORTS

X. CONSENT CALENDAR

- *3. Receive the Monthly Update of the Odor Control Report (Staff Contact: Greg Chung, 408-586-3355)**

Background: From July 7 through August 10, 2017, the Bay Area Air Quality Management District (BAAQMD) forwarded 165 complaints originating in Milpitas. 93 complaints identified a garbage odor, 6 complaints identified a sewage odor and 66 complaints did not identify an odor source. As of the last Council update, the City's odor reporting website has received 17 reported complaints.

California Environmental Quality Act: The item is exempt from CEQA as there will be no physical change to the environment.

Recommendation: Receive the monthly update of the Odor Control Report.

Attachment: None

- *4. Approve Request to Waive Park Rental Fee for the Association of Indo-Americans Swades Festival Held at Murphy Park on August 6, 2017 (Staff Contact: Mary Lavelle, 408-586-3001)**

Background: On August 10, 2017, the City Clerk received a request for a fee waiver from Councilmember Anthony Phan for the Association of Indo-Americans regarding its recent Swades Festival held at Murphy Park. The request is to waive the fee for some of the costs to rent the park where the festival was held last month.

Fiscal Impact: \$1,000. If the request is approved by City Council, \$20,666.23 would remain in City Council Unallocated Community Promotions budget.

Recommendation: Waive the requested fee for the Association of Indo-Americans to rent Murphy Park for the Swades Festival held on August 6, 2017.

Attachments:

[a\) Fee Waiver Request form + IRS non-profit status](#)

[b\) Standard Operating Procedure 01-07](#)

[c\) Budget by FY for Council Unallocated Community Promotions](#)

- *5. Adopt a Resolution to Authorize Filing an Application for Funding Assigned to Metropolitan Transportation Commission and Committing Any Necessary Matching Funds and Stating the Assurance to Complete the Project – the 2019 Street Resurfacing Project (Staff Contact: Steve Chan, 408-586-3324)**

Background: The City of Milpitas (Engineering department) will submit an application to the Metropolitan Transportation Commission (MTC) for \$1,609,000 in One Bay Area Cycle 2 funding assigned to MTC for programming discretion. The funding will be used for 2019 Street Resurfacing Project. The required minimum City local match to receive the funding is \$208,463.

The project scope includes maintenance and rehabilitation of various city roadways, construction of curb ramps and sidewalk, and installation of signing and striping. Specific project streets will be identified in the project design phase schedule for 2018 based on the City's Pavement Management Program to maintain a citywide Pavement Condition Index target of 70 or above, Good Condition. Project construction is scheduled for summer of 2019.

California Environmental Quality Act: The project is exempt under Section 15301 (Existing Facilities) of the CEQA Guideline.

Fiscal Impact: None. There is sufficient required local match funding to complete the project.

Recommendation: Adopt a resolution to authorize filing an application for funding assigned to MTC and committing any necessary matching funds and stating the assurance to complete the 2019 Street Resurfacing Project.

Attachment: [Resolution](#)

- *6. **Per Request of Councilmember Phan, Consider Adoption of a Resolution Opposing the Display of the Flag of the Socialist Republic of Vietnam on City-owned Flag Poles (Contact: Councilmember Phan, 408-586-3032)**

Recommendation: At request of Councilmember Phan, adopt a resolution opposing the display of the flag of the Socialist Republic of Vietnam on City-owned flag poles.

Attachment: [Resolution](#)

- *7. **Approve Membership in the Houston-Galveston Area Council (HGAC) and Authorize the City Manager to Sign the Interlocal Contract for Cooperative Purchasing to Maximize Discount on Purchase of Two 2017 Pierce Velocity All-Wheel-Steer Fire Pumpers (Staff Contact: Chris Schroeder, 408-586-3161)**

Background: On June 6, 2017, by Resolution No. 8672, the City Council authorized the sole source purchase of two Pierce 2017 Velocity All-Wheel-Steer fire pumpers from Golden State Fire Apparatus, Inc. for \$1,455,176. The quote from Pierce was predicated on the purchase going through HGAC, which is a cooperative organized for the purchase of a wide variety of competitively procured vehicles and equipment, including fire service apparatus, under the authority of the Texas Interlocal Cooperative Act, Chapter 791. The Act allows HGAC to extend its competitively bid contracts to other state and local governments. The Pierce quote includes a discount of \$66,637.44. The quote would be \$23,638.83 higher if not purchased through HGAC. In order to receive the HGAC discount, membership in HGAC must be authorized by the local government's governing body, in this case City Council. Staff requests that City Council approve membership in HGAC and authorize the City Manager to sign the HGAC contract for membership.

Fiscal Impact: Membership in HGAC will save the City \$23,638.83.

Recommendation: Approve the City's membership in Houston-Galveston Area Council (HGAC) and authorize the City Manager to sign the membership contract with HGAC.

Attachment: [Contract with HGAC Buyer](#)

- *8. **Approve and Authorize the City Manager to Execute the Subdivision Improvement Agreement for Mixed-Use Development Project Located at 1646 Centre Pointe by SHAC Centre Pointe Apartments LLC (Staff Contact: Judy Chu, 408-586-3325)**

Background: On May 3, 2016, the City Council conditionally approved a Vesting Tentative Map, a Site Development Permit and a Conditional Use Permit to allow for two mixed-use buildings with 694 residential units and 36,500 square feet of the commercial space at 1646 Centre Pointe between Montague Expressway and Great Mall Parkway by SHAC Centre Pointe Apartments LLC (the "Developer").

The City Engineer has reviewed and approved public improvement plans (2-1221) pursuant to MMC XI-1-7.09-2. The Developer has executed a Subdivision Improvement Agreement (the “Agreement”) as approved by the City Attorney as to form and by the City Engineer as to substance pursuant to MMC XI-1-17.01 and provided improvement securities (in the total amount of \$2,482,500.00 for faithful performance and \$2,482,500.00 for labor and materials) to guarantee completion of required public improvements.

California Environmental Quality Act: Execution of the Agreement is not considered a project under CEQA as there will be no direct, or reasonably foreseeable indirect physical change in the environment.

Fiscal Impact: None.

Recommendation: Approve and authorize the City Manager to execute the Subdivision Improvement Agreement for Mixed-use Development Project located at 1646 Centre Pointe by SHAC Centre Pointe.

Attachment: [Subdivision Improvement Agreement – SHAC Centre Pointe Apartments](#)

- *9. Approve Amendment No. 1 to the Agreement with RMC Water and Environment for the Marylinn Drive Sanitary Sewer Replacement, Projects No. 6115 and No. 6116 (Staff Contact: Steve Erickson, 408-586-3301)**

Background: On March 7, 2017, the City entered into a consultant agreement with RMC Water and Environment in the amount of \$138,945 to prepare plans and specifications for construction of cured-in-place pipe lining (CIPP) of sewers on Marylinn Drive near Heath Street including the installation of sewer service laterals and rehabilitation of manholes. The engineers estimated construction cost is \$750,000.

Project construction documents were completed, the project was advertised for bid proposals, and bid opening was July 19, 2017. Unfortunately, no bids were received and the window for construction this year as mandated by permits from State Fish & Wildlife and the Santa Clara Valley Water District is too short to complete the project this construction season.

Staff interviewed several contractors specializing in CIPP lining work to determine why they did not submit a bid. The two reasons stated were contractors are booked with work for the construction season, and due to the very short construction window this year as allowed by permit.

Staff recommends the project be repackaged and re-advertised in December 2017 for bid opening in January 2018. This will allow the project to start construction in March and will provide sufficient time for completion within the period allowed by permit. Bidding the project at the end of the year will also help get the City's projects at the top of contractors work schedules for 2018.

Additional contract services are recommended to allow RMC Water and Environment to assist staff with agency permit revisions, re-packaging and re-advertising the project for a December bid advertisement. Staff negotiated a scope and fee for these services not to exceed \$8,812, which is considered reasonable for the work. Approval of this agreement amendment brings the total agreement amount to \$147,757.

Alternative: Failure to approve the amendment would result in not proceeding with the rehabilitation alternative design and construction work.

California Environmental Quality Act: This project is categorically exempt under Section 15301 of the California Environmental Quality Act guidelines for maintenance of existing facilities.

Fiscal Impact: None. Sufficient funds are available in the project budget.

Recommendation: Approve Amendment No. 1 to the Agreement with RMC Water & Environment to increase compensation in the additional amount of \$8,812 for Marylinn Drive Sanitary Sewer Replacement, Projects No. 6115 and No. 6116.

Attachment: [Amendment](#)

- *10. Approve Second Amendment to the Franchise Agreement for Disposal of Solid Waste with USA Waste doing business as Waste Management of South Bay to Extend the Commencement Date (Staff Contact: Christopher Diaz, 408-586-3040)**

Background: On March 15, 2016, the City Council approved an exclusive Franchise Agreement for disposal of solid waste with USA Waste of California, Inc. (“USA Waste”), d/b/a Waste Management of South Bay. On April 28, 2016, the City and USA Waste entered into the Franchise Agreement, which provides for a 20-year term period from September 6, 2017 through and including December 30, 2037. On March 21, 2017, the City and USA Waste entered into the First Amendment to the Franchise Agreement in order to modify the approved disposal site from Guadalupe Landfill to Kirby Landfill.

While the Franchise Agreement for disposal of solid waste with USA Waste, as amended, provides for a commencement date of September 6, 2017, the City’s Franchise Agreement for collection of solid waste with Milpitas Sanitation, Inc., as amended, provides for a commencement date of December 1, 2017. Accordingly, the City and USA Waste wish to further amend the Franchise Agreement for disposal of solid waste to extend its commencement date from September 6, 2017 to December 1, 2017. This will ensure that the start date for disposal services will coincide with the start date for collection services. The end date and all other terms of the Franchise Agreement for disposal of solid waste remain unchanged.

Fiscal Impact: None.

Recommendation: Approve Second Amendment to the franchise agreement for disposal of solid waste with USA Waste of California, Inc. doing business as Waste Management of South Bay.

Attachment: [Second Amendment](#)

- *11. Receive a Report on Emergency Repair of Fire Engine E-86 and Authorize Payment of Invoice in the Amount of \$23,227.85 to Burton’s Fire, Inc. (Staff Contact: Nina Hawk, 408-586-2603)**

Background: Pursuant to state public contracting law and Council Resolution No. 7779, the Director of Public Works must report all emergency work to the City Council.

Fire Engine E-86 is a Pierce All-Wheel Steer front line apparatus out of Milpitas Fire Station 1. This Engine has a complex rear Drive/Steer axle system for maneuvering in tight spaces. On May 25th 2017, E-86 responded to a grass fire in the lower Milpitas hills. While in response to this event, the left rear axle failed. The engine was removed from service and towed back to Fire Maintenance and inspected by our Fire Fleet Mechanic. After inspection, it was determined that the Engine needed further assessment and was sent to Burton’s Fire, Inc. in Modesto, CA for a more complete evaluation and repair.

Burton's is an authorized Pierce All-Wheel Steer repair facility and has more expertise and experience than a competing facility in Sacramento. E-86 was then trailered to Modesto where evaluation and repairs to the left and right rear steer axles were made. This repair process is labor intensive and consisted of replacing the left axle and its components along with upgrading the right side's system to current standards.

The repair of Fire Engine E-86 qualifies as an emergency repair due to the critical health and safety role that fire engines perform for the City. When a fire engine is out of service, it places lives at risk by reducing the ability of the Milpitas Fire Department to respond to emergencies in a timely and effective manner.

Fiscal Impact: None

Recommendation: Authorize staff to pay invoice in the amount of \$23,227.85 to Burton's Fire, Inc. from the Fleet Maintenance Repair and Maintenance operating budget.

Attachment: None

XI. UNFINISHED BUSINESS

12. Receive Additional Information Requested by Council Relative to Specific Location and Radio Frequency Impact, and Approve the Agreement Between the City of Milpitas and Mobilitie to Install Small Cell Antennas on Municipal Facilities (Staff Contact: Mike Luu, 408-586-2706)

Background: Mobilitie requested a Conditional Use Permit for the construction of a new small cell site within the public right of way of existing street light pole. The equipment associated with the cellular antenna would be installed to the pole between seven and 24 feet above ground level. Planning Commission approved four Resolutions 16-025, 16-026, 16-027, 16-029 for four sites. These small cell sites do not necessarily provide WiFi capability. The proposed agreement will allow for the installation of four small cell antennas at four municipal facilities. Any future small cell antenna installation by Mobilitie will be requested via additional site supplement.

The Telecommunications Commission heard a staff report on this agreement on August 21. Commissioners supported the agreement and recommended City Council approve it, in order to maximize revenue per antenna and improve service for mobile users in the City. Also, City staff will provide an update to City Council on September 5 of the approach that nearby cities are taking with regard to placement of, and fees received for, similar mobile antennas by private companies.

Fiscal Impact: As part of the agreement, Mobilitie LLC agrees to pay an annual fee of \$1,500 for the use of each authorized installation of small cell equipment.

Recommendations:

- 1) Receive additional information requested by Council.
- 2) Approve the Agreement between the City of Milpitas and Mobilitie LLC for the use of municipal facilities to install small cell antennas and associated equipment.

Attachments:

- [a\) Small Cell License Agreement with Mobilitie](#)
- [b\) Senate Bill 649](#)
- [c\) Location and Radio Frequency information](#)

XII. REPORT

13. **Discuss City of Milpitas Advisory Commissions and Process for Commission Appointments (Staff Contact: Steve Pangelinan, 408-586-3051)**

Background: Councilmembers have expressed an interest to discuss the 14 Council-appointed City of Milpitas Commissions, and the process for appointing residents to those bodies.

Recommendation: Discuss City Commissions and process of appointments. Direct staff, as requested.

Attachments: None

XIII. NEW BUSINESS

14. **Approve Fiscal Year 2016-17 Year End Budget Adjustments (Staff Contact: Will Fuentes, 408-586-3111)**

Background: Finance staff is in the process of closing the City's accounts for Fiscal Year 2016-17 with a focus on expenditures. To maintain conformity with the City's budgeting policies and to prepare for the annual external financial audit, staff examined all expenditure accounts and identified the following budget adjustments. These adjustments recognize items arising during the fiscal year that were not included or vary from original FY 2016-17 budget estimates. This is a common annual end of the year "true-up" process amongst local governments that is critical to the year-end audit/close. The City's budget policy requires that any additional appropriations to a department, capital improvement project's budget or re-appropriation of monies from one fund to another must be approved by the City Council. These requests are summarized below and quantified in a budget change form (in agenda packet).

Necessary budget adjustments at year end FY 2016-17 include three operations budget changes:

Operations:

1. **Increase General Fund budget appropriations for the Fire Department by \$393,883 for incurred overtime expenditures** to respond to regional fires through the California Fire Service and Rescue Emergency Mutual Aid System. The source of funding for the budget appropriation is from reimbursements received from the State of California Office of Emergency Services (OES). The revenue account for this reimbursement will also be increased by \$393,883 to offset the expenditure adjustment.
2. **Reallocate employee leave cash-out in the amount of \$130,000 from General Fund Non-Departmental to the Fire Department.** The annual leave cash-out is routinely budgeted in non-departmental as a placeholder for employee separations as they occur. Total leave cash-out was budgeted at \$650,000 for FY 2016-17. The level of cash-out can vary from year-to-year depending on employee requests and employee separations from the City. Staff budgets conservatively to ensure adequate funds are available for this liability.
3. **Increase budget appropriation in the amount of \$33,280 for the Police Department Grant Fund for equipment purchases.** The request for increased funding is due to a Citizens Option for Public Safety (COPS) monies received in October 2016. This additional allocation of \$33,280 for COPS 2016, will be used within the categories of the spending plan previously approved by the City Council for COPS 2016 for Video/Audio Recorders - \$18,280 and Polygraph Examiner Position - \$15,000. The revenue account for this grant will also be increased by \$33,280 to offset the expenditure adjustment.

Fiscal Impact: None. There is no impact to the City's fund balance.

Recommendation: Approve three Fiscal Year 2016-17 year-end budget appropriations and reallocations for public safety departments as itemized on the budget change form.

Attachment: [Budget Change Form](#)

15. Receive Presentation on the “silicon valley IDEA” Program from Representatives of the Silicon Valley Organization (SVO) and Consider a Partnership with the SVO (Contact: Councilmember Phan, 408-586-3032)

Background: According to its website, the Silicon Valley Organization's program, “silicon valley IDEA will convene regional Thought Leaders from business, government and non-profits to identify innovative solutions to address the pressure points business is facing within the areas of “Quality of Life,” “Business Velocity” and “Regional Branding.” ”

Fiscal Impact: Uncertain.

Recommendation: Per request of Councilmember Phan, receive a presentation at the City Council meeting on the Silicon Valley Organization's IDEA program from SVO staff and consider forming a partnership with that organization.

Attachment: None

16. Receive Report on City Credit Card Policy (Staff Contact: Will Fuentes, 408-586-3111)

Background: City credit cards, provided through U.S. Bank and the state's Cal-Card program, are used and assigned for the purpose of providing a convenient and effective means of making small-dollar operational purchases less than \$5,000. Their use is common practice for public agencies statewide. Additionally, City credit cards are an invaluable tool in facilitating emergency or non-recurring purchases in those unique instances when there are no other readily available means to pay for goods or off-site services (e.g., tire repairs, computer repairs, etc.). Due to their small dollar amount, credit card purchases do not require the use of a City Purchase Order (PO). Per Section I-2-4.01 of the Milpitas Municipal Code, all City purchases over \$5,000, regardless of method of payment, require the use of a PO reviewed and approved by a Department Director, the Director of Financial Services and the City Manager.

The City's credit card is for “Official Use Only.” Personal use of a City credit card is strictly prohibited by Standard Operating Procedure (SOP) 06-03; given to each Cardholder upon request of a new City credit card. Misuse of a City credit card can lead to disciplinary action up to and including termination, and use of any other remedies, both civil and penal, available to the City. In addition, City credit cards are to be used by permanent City employees only. City credit cards are issued with the responsible person's name imprinted on the face of the card and each individual who holds a City credit card shall maintain his/her specific card under his/her control.

A City credit card shall not be used to circumvent any existing City of Milpitas purchasing policy, procedure, or practice. To receive a City credit card, an employee must submit a Credit Card Request Form that provides justification for card issuance and is reviewed and signed by their Department Director before being submitted to the Director of Financial Services for review. If the issuance is appropriate and necessary for City business, the Director of Financial Services will recommend to the City Manager for approval. The City Manager has the final review and approval for issuing City credit cards.

If a request is approved, the employee is then provided with a detailed Credit Card Manual (attached). The Credit Card Manual and SOP 06-03 were recently updated. A summary of those changes is below.

Changes

- **Personal Use** – The City has a strict “No Personal Use” policy for City issued credit cards. This was stated in previous versions of the Credit Card Policy, but staff would like to again re-emphasize it. The new version of the Credit Card Policy places this restriction at the beginning and repeats it several times within the Policy and the Credit Card Manual.
- **Maximum Credit Card Limit** – Purchases over \$5,000 require the use of an approved City PO per Section I-2-4.01 of the Milpitas Municipal Code. However, the PO threshold was formerly \$3,000 and the Credit Card Policy and Credit Card Manual reflected that lower amount. This created an unintended gap between the current PO threshold of \$5,000 and the Credit Policy and Manual, which both showed a \$3,000 limit. Thus, the amount was raised to \$5,000 in both documents to ensure consistency with current PO Policy.
- **Approving Official** – Department Directors have responsibility for reviewing and approving Credit Card statements of Cardholders in their departments before submitting to the Finance Department for approval. Further emphasis for this responsibility is included in the revised Credit Card Policy and Manual. In addition, while it was not addressed previously, the revised Credit Card Manual now clearly states that “No Cardholder shall approve his or her own (monthly) Statement of Account and no Cardholder shall have his or her Statement of Account approved by an employee at a lower positional level in the organization. The only exception is for the City Manager’s Statement of Account, which will be reviewed and approved by the Director of Financial Services.”
- **Reconciliation and Documentation** – Every year, external auditors review the City’s financial transactions and internal controls for validity and adherence to Generally Accepted Accounting Principles (GAAP). During the course of these audits, they also test various transactions such as City credit card purchases. In recent years, they have discovered late review and approval of monthly credit card Statements of Account and lack of appropriate documentation such as transaction receipts. The revised Credit Card Policy and Manual addresses these findings and deficiencies and clearly states a City credit card may be suspended or revoked by the Director of Financial Services for repeated violations of policy such as lack of proper documentation and late submissions.
- **City Sponsored Events** – Staff may use City credit cards to pay for City sponsored events such as meetings, luncheons, dinners, etc. The details of these events though were not properly documented prior to the event when a City credit card paid for them. Thus, a new City Credit Card Event Form is being implemented. This will detail the purpose of the event, total cost charged to a City credit card, and who attended. If the event requires a PO due to a cost over \$5,000, this information was and is already being captured. However, this level of detail was not previously captured when City credit cards were used. The new City Credit Card Event Form will enhance control over these events and enhance transparency of City financial transactions.

The City’s credit card program is an important operational tool, but its use must be appropriate and transparent to the City Council and the public. While the use of a credit card program is standard practice for public agencies, it is a privilege to Cardholders and not a

right. The Finance Department will continue to monitor the City's credit card program to ensure compliance with policy and take appropriate actions when policy is not followed. The Finance Department will periodically evaluate the continued need of those who are issued a City credit card and recommend account cancellation when an account is no longer active, needed, and/or appropriate. Staff recommends an annual report be provided to Council in January detailing any deviations from policy that may have occurred in the prior calendar year, external audit findings, corrective actions taken, and further recommendations for program improvement. At the discretion of the City Council, reporting requirements and other related City credit card policies and procedures could be added to the Milpitas Municipal Code at a future meeting.

Fiscal Impact: None

Recommendation: Per request of Councilmember Nuñez, receive a staff report on City Credit Card Policy and provide any input or recommendations.

Attachments:

[a\) Standard Operating Procedure 06-03 Credit Card Policy](#)

[b\) Credit Card Manual](#)

XIV. RESOLUTIONS

17. **Receive Updated Information Responding to Council Input and Consider Adopting a Resolution to Amend the By-Laws of the Milpitas Planning Commission (Staff Contact: Bradley Misner, 408-586-3273)**

Background: Per request of the Milpitas Planning Commission in September 2016 to consider potential amendments to its rules and regulations, staff worked with Planning Commissioners to clean up existing language and draft a revised version of the by-laws. On August 1, 2017, the Planning Commission's recommendations were discussed by the Milpitas City Council. Council directed to staff to bring forward a Resolution to effectuate the proposed by-law amendments. Council is requested to adopt a resolution approving all amendments to the by-laws.

Included (in the agenda packet) are copies of the by-laws showing all tracked changes and a final revised version.

Fiscal Impact: None

Recommendations:

- 1) Receive updated information in response to questions from the City Council.
- 2) If desired, adopt a resolution approving the updated By-Laws of the Milpitas Planning Commission.

Attachments:

[a\) Resolution + Exhibit \(final copy of PC By-Laws\)](#)

[b\) Red-lined edition of Planning Commission By-Laws](#)

18. **Consider Adopting a Resolution Approving a Censure Policy for the City Council (Staff Contact: Christopher Diaz, 408-586-3040)**

Background: On August 1, 2017, City Council considered the proposed Resolution for a censure policy; however, no vote was taken, after the motion made received no second at that meeting. Councilmember Nuñez requests City Council to reconsider the proposed resolution for a vote on September 5.

Censure is defined as the “formal resolution of a legislative, administrative or other body reprimanding a person, normally one of its own members, for specified conduct.” (Black’s Law Dictionary.) Public censure of a City Councilmember is generally done in the form of a resolution of reproach that is adopted by the City Council and then read to the members of the public in attendance at that City Council meeting. The resolution of reproach thus becomes a public record of the City.

Notice of an intent to censure and an opportunity for the Councilmember to respond is recommended to protect the reputational interests of the Councilmember. The City Council must make supported factual findings before censuring a Councilmember. (*Braun v. City of Taft* (1984) 154 Cal. App. 3d 332, 348.) In addition, the California Attorney General has issued a written opinion concluding that complaints against elected officials may not be discussed in closed session. (61 Ops. Cal. Atty. Gen. 10 (1978).) Therefore, if the City Council wishes to censure one of its members, the Council should adopt a resolution containing findings as to why it believes a censure is appropriate for consideration in open session.

It should also be noted that the Brown Act protects a member’s public criticism of policies, procedures, programs or services of the agency or acts or omissions of the legislative body. (See Gov. Code §54954.3(c).) Accordingly, a member cannot be reprimanded or censured for expressing his or her opinions regarding City policy or conduct.

In Milpitas, there are no rules or policies concerning the authority or procedures to follow when censuring members of the City Council. The policy in the proposed Resolution, if adopted by Council, would provide such a procedure while meeting the legal requirements described above.

Fiscal Impact: None.

Recommendation: Adopt a resolution approving a censure policy for the Milpitas City Council.

Attachment: [Resolution with proposed censure policy](#)

19. Consider Adopting a Resolution and Authorizing a Letter Opposing Senate Bill 649 and Receive a Report on the Bill’s Status (Staff Contacts: Christopher Diaz, 408-586-3040 and Mike Luu, 408-586-2706)

Background: On February 17, 2017, SB 649 was introduced in the State Senate to address small cell telecommunication facilities. The bill has since gone through various amendments and changes but is generally perceived by cities, including the League of California Cities, as taking away power from local government in having discretionary review over small cell facilities. Further, one component of the bill limits the dollar amount cities can charge telecommunication providers for use of their existing vertical infrastructure. Overall, SB 649 is still opposed by 215 cities in California and is strongly opposed by the League of California Cities. The main component of the bill is as follows:

- SB 649 may prohibit discretionary review of “small cell” wireless antennas and related equipment.
- SB 649 provides a de facto exemption to the California Environmental Quality Act (CEQA) for the installation of certain types of telecommunication facilities.
- SB 649 will cap lease agreements for use of public property at \$250 (it was \$850 under the prior version of the bill) annually per attachment rates for each “small cell.” In contrast, some cities have been able to negotiate leases for “small cells” upwards

of \$3,000, while others have negotiated “free” access to public property in exchange for a host of tangible public benefits.

Fiscal Impact: The fiscal effect of SB 649 is unknown at this time, but it will limit the ability of the City to negotiate a higher lease rate for use of the City’s vertical infrastructure.

Recommendations: Receive report and consider (1) adopting Resolution opposing Senate Bill 649; and (2) motion to authorize letter opposing Senate Bill 649.

Attachments:

[a\) Resolution](#)

[b\) letter](#)

XV. REPORTS OF MAYOR & COUNCILMEMBERS – from the assigned Commissions, Committees and Agencies

XVI. ADJOURNMENT

NEXT REGULAR CITY COUNCIL MEETING
TUESDAY, SEPTEMBER 15, 2017